

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

VISIBLE SYSTEMS CORPORATION,

Plaintiff

v.

UNISYS CORPORATION,

Defendant

Civil Action No. 04-CV-11610-RGS

**MEMORANDUM IN OPPOSITION TO**  
**MOTION OF UNISYS CORPORATION TO AMEND ITS ANSWER**

Defendant Unisys Corporation (“Unisys”) has filed a motion to amend its Answer by adding a counterclaim that seeks cancellation of one or more of Plaintiff Visible Systems Corporation’s (“Visible Systems”) marks that incorporate the term VISIBLE.

Amendment of an answer, pursuant to Rule 15(a), Fed. R. Civ. P., is allowed “when justice so requires” and is not allowed when “such amendment would be futile, would be prejudicial to the opposing party, or is the result of undue or intended delay.” Albertini v. Summit Technical Services, Inc., 287 F.Supp.2d 92, 95 (D. Mass. 2003).

Unisys’ motion does not mention any particular development or discovery that requires this amendment at this time. Unisys has asserted to Visible Systems for the past year that Visible Systems’ registered marks are not distinctive. This assertion appears in ¶ 14 of Unisys’ Answer. Unisys’ counsel argued to the Court at the scheduling conference on September 26, 2005 that VISIBLE is an ordinary generic or descriptive term. Without any explanation of the delay, Unisys’ delay in making this counterclaim is undue.

Further, Unisys' proposed amendment is futile with respect to two of Visible Systems' marks that have VISIBLE as the salient term: VISIBLE SYSTEMS and VISIBLE SYSTEMS CORPORATION. Both marks have become incontestable.

As to Visible Systems' other marks incorporating the term VISIBLE, Visible Systems is prepared to demonstrate the distinctive and suggestive nature of those marks.

Visible Systems accordingly asks the Court to deny Unisys' motion. In the alternative, should the Court grant the motion, Visible Systems respectfully requests that the amendment not become an occasion for extension of discovery deadlines.

Plaintiff,

VISIBLE SYSTEMS CORPORATION

By its attorneys:

/s/ Stephen H. Galebach  
Stephen H. Galebach, BBO # 653006 ([galebach@galebachlaw.com](mailto:galebach@galebachlaw.com))  
Joseph E. Rendini, BBO # 542746 ([rendini@galebachlaw.com](mailto:rendini@galebachlaw.com))  
GALEBACH LAW  
One Knollcrest Drive  
Andover, MA 01810  
978-258-5300

and

Lawrence M. Kraus, BBO # 564561 ([lkraus@foley.com](mailto:lkraus@foley.com))  
Carrie J. Fletcher, BBO # 642369  
FOLEY & LARDNER LLP  
111 Huntington Avenue  
Boston, MA 02199  
617-342-4000

Dated: March 17, 2006

**Certificate of Service**

I certify that the foregoing document filed via ECF is being served electronically on registered counsel as identified on the Notice of Electronic Filing.

          /ss/Stephen H. Galebach  
Stephen H. Galebach